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QUESTION OF PALESTINE
THE SITUATION IN THE MIDDLE EAST
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AGENCY FOR PALESTINE REFUGEES
IN THE NEAR EAST
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES
AFFECTING THE HUMAN RIGHTS OF
THE PALESTINIAN PEOPLE AND OTHER
ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Forty-eighth year

Letter dated 8 January 1993 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a memorandum on the deporations by Israel, the occupying Power, of Palestinian civilians from the occupied Palestinian territory, including Jerusalem (see annex). The memorandum covers the more recent mass deportation by the Government of Israel of more than 400 Palestinian civilians, on 17 December 1992, as well as background information on the subject as a whole. It also includes our own conclusions with regard to the subject.

I would be grateful if you would arrange to have the text of the present letter and its annex distributed as an official document of the General Assembly, under agenda items 30, 35, 73, and 74, and of the Security Council.

(Signed) Dr. Nasser AL-KIDWA
Permanent Observer of
Palestine to the
United Nations

ANNEX

Memorandum on the deportations by Israel, the occupying Power, of Palestinian civilians from the occupied Palestinian territory, including Jerusalem

1. The Israeli Government's mass deportation of more than 400 Palestinian civilians on 17 December 1992

- On 16 December 1992, the Israeli Government took the unprecedented step of ordering the summary deportation of 418 Palestinian civilians from the occupied Palestinian territory. The Israeli authorities placed those Palestinians, blindfolded and bound, in buses and drove them to Israel's northern border.

- Upon the leakage of information on the deportation, human rights activists, including lawyers, petitioned the Israeli Supreme Court for a restraining order. The Court granted the stay order and convened to discuss the appeal. After 15 hours, it allowed the deportation orders to proceed.

- Meanwhile, the Israeli authorities returned a number of Palestinian civilians from the buses and several others were brought by helicopter to join the deportees. After an overnight stay in the buses, 415 were driven, on 17 December 1992, into South Lebanon across the so-called security zone, and were dumped in the freezing winter weather in a mountainous area between the Israeli/So-Called South Lebanon Army checkpoint and the Lebanese army checkpoint.

- Israel refused to release the names of the deportees, and did not notify their families of the measures taken. In addition, no individual charges for any criminal act had been made against those deported, and none of them received a copy of their deportation orders. (After approximately two weeks, the Israeli authorities announced that they had made a mistake with regard to at least 10 of the deportees.)

- On 18 December 1992, the Security Council unanimously adopted resolution 799 (1992), in which the Council, strongly condemned the action taken by Israel and demanded "that Israel, the occupying Power, ensure the safe and immediate return to the occupied territories of all those deported". The Council also requested the Secretary-General "to consider dispatching a representative to the area to follow up with the Israeli Government with regard to this serious situation and to report to the Security Council".

- The deportees tried to go back, on foot, along the same route that they were brought, but they were prevented from doing so due to shooting and shelling directed at them by the Israeli army. Such shelling was repeated several times at later dates.

- In the meantime, the Lebanese Government, on the grounds that the deportations carried out by Israel violated the sovereignty and territorial integrity of Lebanon, and that those deportees had been illegally brought onto Lebanese territory, refused to accept the deportees and refused to allow assistance to them, as they are solely the responsibility of the Israeli Government. It is worth mentioning that Security Council resolution 799 (1992) reaffirmed "the independence, sovereignty and territorial integrity of Lebanon".

- The Secretary-General, in respose to the request made by the Council, dispatched Mr. James Jonah, Under-Secretary-General for Political Affairs, to the region from 27 to 30 December 1992. He met with Israeli officials, and he also met with Lebanese officials when he went to Lebanon.

- The actual situation of the deportees has been deteriorating due to the harshness of weather and a lack of all essentials, including water, medicine and foodstuffs. A number of them have become sick and several have been injured. Meanwhile, the Israeli Government rejected a formal request by the International Committee of the Red Cross to provide the deportees with the essential materials through Israel's borders.

- In a letter, dated 3 January 1993, the Secretary-General of the United Nations informed the President of the Security Council that "the mission of Mr. Jonah was unsuccessful". The Secretary-General stated, "From all that I have heard, I believe this is attributable primarily to Israel's unwillingness to comply with resolution 799". The Secretary-General also informed the Council that he decided to dispatch to the region a second mission, to be led by his special political advisor and representative to the multilateral peace talks on the Middle East, Mr. Chinmaya Gharekhan. The Secretary-General expressed his earnest hope that "the Israeli authorities will recognize the need to comply with resolution 799", however, he stated, "should this not be the case, I may have to recommend in my report that the Council consider taking further steps to ensure that its decision is respected".

At the United Nations, several committees and groups, such as the Committee on Palestine of the OIC, the Committee on Palestine of NAM, the Arab Group, and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People; issued strongly worded statements on the matter. All of those statements called for decisive actions by the Security Council to guarantee full implementation of resolution 799 (1992). Some called for a new resolution under Chapter VII of the United Nations Charter.

2. Background information on deportations

- Israel, the occupying Power, has deported approximately 2,500 Palestinian civilians since 1967. Its latest action in this regard, the deportation of more than 400 Palestinians, on 17 December 1992, constituted mass deportation.

Security Council resolutions on deportation:

- The United Nations Security Council adopted 11 resolutions specifically on the issue of deportation. These resolutions are 468 (1980), 469 (1980), 484 (1980), 607 (1988), 608 (1988), 636 (1989), 641 (1989), 694 (1991), 726 (1992) and 799 (1992), in addition to resolution 681 (1990) which contained a paragraph on deportation. [In addition, there are a vast number of General Assembly resolutions, as well as resolutions of other organs of the United Nations, on the subject.]

- All of those resolutions condemned or deplored Israeli deportation policies and actions, and requested, in a variety of forms, that Israel, the occupying Power, guarantee the safe and immediate return of the deportees and desist from taking such actions.

- All of those resolutions, in addition to numerous other Security Council resolutions affirmed the applicability of the Fourth Geneva Convention of 1949 to the occupied Palestinian territories, including Jerusalem, which considers deportation to be illegal. Resolution 681 urged the Government of Israel "to accept the de jure applicability of the Fourth Geneva Convention of 1949 to all the territories occupied by Israel since 1967, and to abide scrupulously by the provisions of the said Convention". To date, however, none of these resolutions have been heeded by the Israeli Government.

Deportation and international law:

- International law subjects the Israeli occupation of Gaza, the West Bank and East Jerusalem to the provisions of the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War.

- Article 49 of this Convention declares "individual or mass forcible transfers, as well as deportations of protected persons, from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".

- According to the authoritative commentary, done by the International Committee of the Red Cross, on the Convention; this prohibition is "absolute and allows no exceptions". Several other statements of the Red Cross put forth the same position.

- Article 147 of the Convention considers "unlawful deportations" as a grave breach of the Convention. Article 146 of the Convention places specific duties upon the High Contracting Parties to repress grave breaches by seeking out and prosecuting the perpetrators.

- Article 1 of the Convention makes it the obligation of the High Contracting Parties "to respect and to ensure respect for the present Convention in all circumstances".

- In brief, according to the Fourth Geneva Convention, deportation is not only illegal but also constitutes a grave breach of the Convention. Grave breaches of the Geneva Convention amount to war crimes. (The 1945 Charter of the International Military Tribunal at Nuremberg defined deportation as a war crime and a crime against humanity.)

Deportation and domestic law:

- Israel invokes Article 108 of the British Defense (Emergency) Regulations of 1945 as the basis for its deportation orders. However, these regulations were in fact revoked by the British Government on the eve of the termination of the British Mandate in May 1948 and therefore, the Israeli Government, in terms of domestic law, is acting without legal basis in deporting Palestinian protected persons.

- Israel started to provide, during the 1970s, very inadequate legal review of deportation orders, which became possible only after more than a thousand Palestinians had already been deported without any form of due process. According to these procedures, a person can appeal a deportation order to a military advisory committee. If the order is confirmed by the committee, the person may petition the Israeli Supreme Court sitting as a High Court of Justice. The procedures are based solely on classified information, which is neither released to the deportee nor to his lawyer. The Israeli court has never revoked a deportation order.

- On 16 December 1992, even the above-mentioned procedures were abolished by a decision of the Government, the text of which was not published. In addition, the nature of the recent mass deportation ended another Israeli argument, which attempted, in the past, to differentiate between "accepted" individual and selected deportation as opposed to "prohibited" mass deportation.

- Ultimately, deportations are administrative orders taken by military commanders and not by any judicial authority, and not pursuant to a procedure which can be measured against due process criteria. They are extrajudicial punishments in the extreme.

3. Conclusions

- Deportation is illegal under international law and constitutes a grave breach of the Fourth Geneva Convention of 1949. It is being carried out without legal basis in terms of domestic law. Deportation also violates numerous Security Council resolutions and represents fundamental disregard of the Universal Declaration of Human Rights and all other human rights instruments and standards. The concept of deportation is parallel to the concept of "transfer" and other racist ideas and theories, such as ethnic cleansing.

- The deportation which took place on 17 December 1992, constitutes, in addition to the above, a form of collective punishment. It has had a detrimental effect on the peace process currently under way, under the co-sponsorship of the United States of America and the Russian Federation. It is inconceivable for the peace process to continue and succeed as long as this situation is not brought to an end.

- The international community, and specifically the Security Council, is duty-bound to compel Israel, a member of the United Nations, to abide by its obligations under Article 25 of the United Nations Charter and to guarantee respect of international law, especially the Fourth Geneva Convention. It is our firm belief that the Security Council has to proceed to adopt a new resolution under Chapter VII of the United Nations Charter to ensure that Israel will accept and carry out previous relative resolutions, especially resolution 799 (1992), which demanded the safe and immediate return of all those deported, and we call upon the Council to do so.